



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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2 TO: The Commission
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13 DATE: April 11, 2018
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15 SUBJECT: MURs 7013 / 7015 (IGX, LLC, *et al.*) – Revised Factual and Legal Analyses
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18 At the Executive Session held on April 10, 2018, the Commission voted to find no reason
19 to believe that Conservative Solutions PAC and Nancy Watkins in her official capacity as
20 treasurer ("CSPAC") violated 52 U.S.C. § 30122, and find no reason to believe that IGX, LLC
21 violated 52 U.S.C. §§ 30102, 30103, 30104 by failing to register and report as a political
22 committee. The Commission also proposed edits to the Factual and Legal Analyses for these
23 Respondents and directed the Office of the General Counsel to implement those edits and
24 circulate the revised documents for Commission approval. The revised Factual and Legal
25 Analyses attached here incorporate the edits circulated by the Republican Commissioners on
26 April 9, 2018, and the edits made at the table during the Executive Session on April 10, 2018.
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28 Accordingly, we recommend that the Commission:

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30 1. Approve the attached Factual and Legal Analyses;
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32 2. Approve the appropriate letters; and
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34 3. Close the file.
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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: IGX, LLC

MUR: 7013 / 7015

I. GENERATION OF MATTER

This matter was generated by two complaints filed with the Federal Election Commission (“Commission”) by the Citizens for Responsibility and Ethics in Washington and Noah Bookbinder, and Campaign Legal Center, Democracy 21, J. Gerald Hebert, Paul S. Ryan, and Tara Malloy. *See* 52 U.S.C. § 30109(a)(1). Conservative Solutions PAC (“CSPAC”), an independent-expenditure-only political committee supporting the 2016 presidential campaign of Marco Rubio, received a \$500,000 contribution that it attributed to IGX, LLC (“IGX”) in its disclosure report to the Commission. Complainants allege that Andrew Duncan violated 52 U.S.C. § 30122, a provision of the Federal Election Campaign Act of 1971, as amended (“Act”), by making that contribution in the name of IGX, and that IGX knowingly permitted its name to be used to make, and CSPAC knowingly accepted, a contribution in the name of another. Complainants also allege that IGX violated 52 U.S.C. §§ 30102, 30103, 30104 by failing to register and report as a political committee as required under the Act.

For the reasons explained below, the Commission finds no reason to believe that IGX, LLC violated the Act by knowingly facilitating a contribution in the name of another, or by failing to register and report as a political committee.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 IGX, LLC is a limited liability company formed in Delaware on May 13, 2015.¹ IGX was
4 reported as making a \$500,000 contribution to CSPAC on October 26, 2015.²

5 Andrew Duncan is the CEO of IGX, LLC and is also “the member/owner” of the LLC
6 and describes IGX as an investment vehicle for entertainment and technology projects.³ He
7 claims that his “employment with IGX is publicly known,” citing a disclosure report filed with
8 the Commission disclosing Duncan’s personal contribution to Marco Rubio’s authorized
9 committee.⁴

10 Conservative Solutions PAC (“CSPAC”) is an independent-expenditure-only committee
11 that registered with the Commission on February 4, 2013. Nancy Watkins is its treasurer of
12 record. During the 2016 election cycle, CSPAC has received over \$60 million in contributions
13 and made over \$55 million in independent expenditures supporting Marco Rubio or opposing
14 Rubio’s opponents in the 2016 presidential election.⁵ CSPAC reported receiving a \$500,000
15 contribution from IGX on October 26, 2015.⁶

16 **B. Contributions in the Name of Another**

¹ “IGX LLC” Dun & Bradstreet Report. IGX’s registered agent is the Corporation Service Company located at 2711 Centerville Rd., Suite 400, Wilmington, DE, 19808; that address is provided on CSPAC’s report disclosing the IGX contribution to the Commission.

² CSPAC, 2015 Year-End Report at 26 (Jan. 31, 2016).

³ Duncan Resp. at 2 (Apr. 26, 2016).

⁴ Duncan Resp. at 2; *see* Marco Rubio for President, Amended 2015 October Quarterly Report at 736 (Oct. 30, 2015).

⁵ *See, e.g.*, 24/48 Hour Independent Expenditure Report (“IE Report”) Mar. 11, 2016 (supporting Marco Rubio); IE Report, Feb. 16, 2016 (opposing Jeb Bush).

⁶ CSPAC, 2015 Year-End Report at 26 (Jan. 31, 2016).

1. Legal Standard

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”⁷ The term “person” for purposes of the Act and Commission regulations include partnerships, corporations, and “any other organization or group of persons.”⁸ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.⁹ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.¹⁰

The Act and the Commission’s implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee “makes”

⁷ 52 U.S.C. § 30101(8)(A).

⁸ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

⁹ 52 U.S.C. § 30122.

¹⁰ 11 C.F.R. § 110.4(b)(2)(i)–(ii). *See* First Gen. Counsel’s Report, MUR 6930 (Prakazrel “Pras” Michel, *et al.*).

1 the resulting contribution¹¹. This is true whether funds are advanced to another person to make a
2 contribution in that person's name or promised as reimbursement of a solicited contribution.

3 2. Analysis

4 The factual record, viewed as a whole, does not support a finding that the, Duncan rather
5 than IGX was the true source of the contribution to CSPAC under Section 30122 of the Act
6 making the allegations, the complaints rely primarily on statements Duncan reportedly made by
7 email to an AP reporter acknowledging that he was the source of the IGX contribution and
8 admitting that he tried to mask his identity by contributing through an LLC because he feared
9 reprisals.¹³ Duncan, however, explicitly denies making any such statements.¹⁴ Further, the AP
10 article does not directly quote Duncan even though it asserts that Duncan made these statements
11 in writing in an email. Duncan contends that the comments attributed to him were written by
12 the reporter and that he neither stated nor suggested that the contribution was from anyone other

¹¹ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the source of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

¹² *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the source of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

¹³ See MUR 7013 Compl. at 5; MUR 7015 Compl. at 4. The news article provided: “Duncan, who said he worked as a technology executive and has invested in several film productions, *acknowledged he was the source of the super PAC donation in emails Tuesday to the AP*. Duncan, who funds human-rights efforts in China, said he admired Rubio’s work on the issue and *had used IGX to mask the donation because he was worried about reprisals*.” Gillum, *supra*.

¹⁴ “The Complaint is predicated strictly upon an Associated Press story that was then repeated by other media reports that included the false statement that Respondent “had used IGX to mask the donation because he was worried about reprisals” — a statement that was written by the reporter and was not a quote from or directly attributed to Respondent. At no time did Respondent state or suggest to the media that the true source of the contribution from IGX, LLC was from anyone or any entity other than IGX, LLC — as indeed that was the case.” Duncan Resp. at 2.

1 than IGX. Moreover, he “clarified on the record¹⁴, by giving an interview to another news
2 outlet, that he was not trying to mask the contribution by making it through an entity¹⁵.

3 Aside from the alleged admission in the news article, the complaints provide no other
4 evidence that tends to support the allegation that Duncan made, and IGX knowingly facilitated, a
5 contribution in the name of another. Further, circumstantial facts in the record support the
6 argument that IGX made a contribution in its own name, as permitted under prevailing law. IGX
7 was formed over five months before it made the contribution at issue, and it appears to have been
8 created and used as an investment vehicle. Moreover, IGX is apparently still in operation¹⁶, it
9 was not a “pop up” LLC that was created to make a political contribution and then dissolved¹⁶.
10 Viewed as a whole, these facts indicate that IGX was formed and used as an ongoing business
11 enterprise, and suggest that it may have had the financial ability to make the contribution at
12 issue without an infusion of outside funds provided to it for that purpose¹⁷.

13 Finally, any argument that Duncan used IGX to mask his identity when contributing to
14 CSPAC to evade disclosure requirements is undermined by previous public disclosures of his
15 affiliation with IGX. When Duncan made a contribution in his own name to Rubio's campaign
16 committee on July 21, 2015 only three months prior to IGX's contribution to CSPAC he

¹⁵ Duncan Resp. at 2; *see Leary, et al., supra* (“The AP reported that Andrew Duncan said he “used IGX to mask the donation because he was worried about reprisals” over his work highlighting human rights abuses in China. In an interview with the Tampa Bay Times, Duncan said he is “cognizant” about China but said IGX was established for a movie project. Duncan said he gave to Rubio because of Rubio's work to highlight human rights issues. ‘In no way was I trying to mask this contribution.’”).

¹⁶ *Cf.* First Gen. Counsel's Report at 4–5, MUR 6485 (W Spann LLC) (“W Spann [LLC] was formed on March 15, 2011. [Its owner] Conard states that he authorized W Spann to make the “donation” to [Restore Our Future] on April 28, 2011. . . . [and he] dissolved W Spann in May 2011.”).

¹⁷ *See* First Gen. Counsel's Report at 9, MUR 6930 (Prakazrel “Pras” Michel) (noting that because the owner of a single-member LLC “created and operated” the LLC “for purposes other than to influence an election by making contributions[.]” the LLC “was not merely a ministerial conduit or vehicle for transferring [the owner's] contributions; it was an active business entity[.]”).

disclosed that he was the CEO of IGX.¹⁸ The fact that Duncan self-disclosed his ties to IGX, and was publicly linked to IGX, undermines the claim that he provided funds to IGX for it to make a contribution while masking his identity as the true contributor.

The facts here could still be viewed as suggestive and that the record does not definitively establish that IGX was, in fact, the true source of the funds contributed to CSPAC. By contrast, in MUR 6930, the owner of a single-member LLC that made contributions to an independent expenditure-only committee provided a sworn statement averring that he never transferred his personal funds to the LLC for it to make political contributions.²⁰ Duncan has not provided a similar sworn statement here. Nonetheless, he has denied the purported admission that appeared in the AP news article, both in a subsequent press article and in his Response, and that alleged statement provided the sole basis for the allegations raised in the complaints. Moreover, the balance of the record does not support those allegations. Accordingly, under these circumstances, the Commission has no reason to believe that IGX LLC violated 52 U.S.C. § 30122 as alleged.

C. Political Committee Status

1. Legal Standard

¹⁸ See Marco Rubio for President, Amended 2015 October Quarterly Report at 736 (Oct. 30, 2015). Aside from contributing to his campaign, Duncan supported Rubio, the candidate that CSPAC most actively supports, in other ways. As the MUR 7013 Complaint points out, Duncan's name appeared on Rubio's campaign website and he was part of a committee that hosted a Rubio campaign fundraiser on October 14, 2015, twelve days before the \$500,000 contribution to CSPAC. See MUR 7013 Compl. at 5–6; Ex. H, I.

¹⁹ See First Gen. Counsel's Report at 8, MUR 6930 (Prakazrel "Pras" Michel) (concluding that the owner of a single-member LLC had not attempted to evade the Act's disclosure requirements by contributing to a Super PAC through his entity where he had publicly acknowledged his ownership of that LLC, and had made contributions to the same committee in his own name during the same election cycle). Here, Duncan "revealed his connection to IGX LLC by identifying himself as the company's CEO in connection with his contribution to Sen. Rubio's presidential campaign committee.

²⁰ See First Gen. Counsel's Report at 8, MUR 6930 (Prakazrel "Pras" Michel).

1 The Act defines a political committee as “any committee, club, association, or other
2 group of persons” that receives aggregate contributions or makes aggregate expenditures in
3 excess of \$1,000 during a calendar year.²¹ Notwithstanding the threshold for contributions and
4 expenditures, an organization will be considered a political committee only if its “major purpose”
5 is nomination or election of a Federal candidate²² Political committees are required to register
6 with the Commission, meet organizational and recordkeeping requirements, and file periodic
7 disclosure reports.²³

8 2. Analysis

9 Although the facts in this matter indicate that IGX met the statutory threshold for political
10 committee status, *i.e.*, that it made aggregate contributions or aggregate expenditures in excess of
11 \$1,000 during a calendar year, the record does not indicate that the LLC had a “major purpose”
12 of nominating or electing Federal candidates. Instead, the available record indicates that IGX
13 was formed for the primary purpose of making investments, *e.g.*, financing entertainment
14 ventures, and it made a one-time political contribution to an independent-expenditure-only
15 committee. Accordingly, the Commission finds no reason to believe that IGX, LLC violated
16 52 U.S.C. §§ 30102, 30103, 30104 as alleged.

²¹ 52 U.S.C. § 30101(4)(A).

²² Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

²³ *See* 52 U.S.C. §§ 30102; 30103; 30104.